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Attorneys for Defendants
 SAN FRANCISCO POLICE DEPARTMENT,
 CITY AND COUNTY OF SAN FRANCISCO,
 MAYOR GAVIN NEWSOM, IN HIS OFFICIAL
 CAPACITY, AND OFFICER LARRY BERTRAND

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

MIKE QUAN, as an individual, and also
 as proprietor of PLAYBAR, INC., dba
 THE ROOM, and JAVIER MAGALLON,

Plaintiffs,

vs.

SAN FRANCISCO POLICE
 DEPARTMENT, CITY AND COUNTY
 OF SAN FRANCISCO, MAYOR GAVIN
 NEWSOM, OFFICER LARRY
 BERTRAND, CALIFORNIA
 DEPARTMENT OF ALCOHOL
 BEVERAGE CONTROL, STATE OF
 CALIFORNIA, OFFICER MICHELLE
 OTT, and DOES 1-100, inclusive,

Defendants.

E-filing

ORIGINAL
 FILED
 2010 APR 28 P 3:08
 RICHARD W. WIEKING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

MEJ

Case No.

CV 10 1835

**NOTICE OF REMOVAL OF ACTION
 UNDER 28 U.S.C. § 1441(B) (FEDERAL
 QUESTION) BY DEFENDANTS CITY
 AND COUNTY OF SAN FRANCISCO,
 MAYOR GAVIN NEWSOM (IN HIS
 OFFICIAL CAPACITY), AND
 OFFICER LARRY BERTRAND OF
 UNVERIFIED COMPLAINT OF
 PLAINTIFFS; DEMAND FOR JURY
 TRIAL
 [28 U.S.C. § 1441(A); F.R.C.P. 38(B)]**

Date Action Filed: March 29, 2010
 Trial Date: None

Attached Documents:

Exhibit A: Superior Court Register of
 Actions

Exhibit B: Summons and Complaint for
 RICO Violation and plaintiffs' proof of
 service for defendant City and County of
 San Francisco

Exhibit C: San Francisco Defendants'
 Answer and Demand For Trial By Jury.

1 **TO: THE CLERK OF THE ABOVE-ENTITLED COURT:**

2 PLEASE TAKE NOTICE that defendants City and County of San Francisco, a municipal
3 corporation (also erroneously sued as San Francisco Police Department), Mayor Gavin Newsom, in
4 his official capacity, and Officer Larry Bertrand (collectively "defendants") hereby remove to this
5 Court pursuant to 28 U.S.C. §§ 1441 and 1446 the state court action described below. Defendants
6 are filing in San Francisco Superior Court a Notice of Removal.

7 1. On or about March 29, 2010, plaintiffs MIKE QUAN, as an individual, and also as
8 proprietor of PLAYBAR, INC., dba THE ROOM, and JAVIER MAGALLON, filed a Complaint in
9 the Superior Court of the State of California in and for the County of San Francisco, entitled *Mike*
10 *Quan, as an individual, and also as proprietor of Playbar, Inc., dba The Room, and Javier*
11 *Magallon v. CCSF, et al.*, Superior Court Case No. 10-498223. Attached hereto as Exhibit A is the
12 Superior Court Register of Actions reflecting the filing of the complaint.

13 2. Defendants are informed and believe that the first date upon which any defendant
14 named in this action received a copy of the Complaint was March 29, 2010, when plaintiffs served
15 the City and County of San Francisco with a copy of the Complaint and Summons. Pursuant to 28
16 U.S.C. § 1446(a), copies of the Summons and Complaint, which constitutes all of the process,
17 pleadings and orders that have been received by the defendant in this case, in addition to plaintiffs'
18 proof of service for defendant City and County of San Francisco, are attached hereto as Exhibit B.
19 Defendants were not served with any corresponding notices or any other state court documents.

20 3. The Complaint purports to state federal causes of action arising under 18 U.S.C. §
21 1962(c) (civil Racketeer Influenced and Corrupt Organizations, or R.I.C.O.).

22 4. This action is therefore a civil action over which this Court has original jurisdiction
23 under 28 U.S.C. § 1331, and is one which may be removed to this Court by defendants pursuant to
24 the provisions of 28 U.S.C. § 1441(b), in that it arises under the federal R.I.C.O. laws. To the
25 extent that plaintiffs' Complaint also alleges a claim or cause of action other than violations of rights
26 under the laws of the United States, said cause(s) of action may be removed and adjudicated by this
27 Court pursuant to 28 U.S.C. §1441(c). This civil action arises in the City and County of San
28

1 Francisco based on plaintiffs' allegations that a substantial part of the events or omissions which
 2 give rise to the claim occurred in the City and County of San Francisco.

3 5. Defendants are informed and believe that the City and County of San Francisco is
 4 the only defendant that has been served the Summons and Complaint in the pending action.
 5 Attached hereto as Exhibit C are copies of the documents defendants have filed in the State Court
 6 Case, including: 1) Defendants' Answer To Plaintiff's Complaint; and 2) Defendants' Demand For
 7 Trial By Jury.

8 **WHEREFORE**, Defendants pray that the above action now pending in the Superior Court
 9 of the State of California in and for the City and County of San Francisco be removed in its entirety
 10 to this Court for all further proceedings, pursuant to 28 U.S.C. § 1441, *et. seq.*

11 **DEMAND FOR JURY TRIAL**

12 Defendants City and County of San Francisco, a municipal corporation (also erroneously
 13 sued as San Francisco Police Department), Mayor Gavin Newsom, in his official capacity, and
 14 Officer Larry Bertrand (collectively "defendants") demand a trial by jury in this action.

15
 16
 17 Dated: April 28, 2010

18 DENNIS J. HERRERA
 19 City Attorney
 20 JOANNE HOEPER
 21 Chief Trial Deputy
 22 ROBERT A. BONTA
 23 Deputy City Attorney

24 By: 

25 ROBERT A. BONTA

26 Attorneys for Defendants
 27 SAN FRANCISCO POLICE DEPARTMENT,
 28 CITY AND COUNTY OF SAN FRANCISCO,
 MAYOR GAVIN NEWSOM, IN HIS OFFICIAL
 CAPACITY, AND OFFICER LARRY BERTRAND

**EXHIBIT A TO
NOTICE OF REMOVAL**

Superior Court of California, County of San Francisco

Case Number: CGC-10-498223

Title: MIKE QUAN et al VS. SAN FRANCISCO POLICE DEPARTMENT et al

Cause of Action: OTHER NON EXEMPT COMPLAINTS

Generated: Apr-28-2010 10:34 am PST

[Register of Actions](#) [Parties](#) [Attorneys](#) [Calendar](#) [Payments](#) [Documents](#)**Register of Actions**

Date Range: First Date Mar-29-2010

Last Date Apr-28-2010

(Dates must be entered as MMM-DD-YYYY)

Descending Date Sequence ☐ALL FILING TYPES ☐

Date	Proceedings	Document	Fee
APR-27-2010	DEMAND FOR JURY FILED BY DEFENDANT MAYOR GAVIN NEWSOM OFFICER LARRY BERTRAND CITY AND COUNTY OF SAN FRANCISCO, MUNICIPAL CORPORATION, (ALSO ERRONEOUSLY SUED AS SAN FRANCISCO POLICE DEPARTMENT)		
APR-27-2010	ANSWER TO COMPLAINT FILED BY DEFENDANT MAYOR GAVIN NEWSOM OFFICER LARRY BERTRAND CITY AND COUNTY OF SAN FRANCISCO, MUNICIPAL CORPORATION, (ALSO ERRONEOUSLY SUED AS SAN FRANCISCO POLICE DEPARTMENT)		EXEMPT
APR-01-2010	SUMMONS ON COMPLAINT, PROOF OF SERVICE ONLY, FILED BY PLAINTIFF QUAN, MIKE AS AN INDIVIDUAL AND ALSO AS PROPRIETOR OF PLAYBAR, INC. DBA THE ROOM MAGALLON, JAVIER SERVED MAR-29-2010, PERSONAL SERVICE ON DEFENDANT CITY AND COUNTY OF SAN FRANCISCO	View	
MAR-29-2010	NOTICE TO PLAINTIFF	View	
MAR-29-2010	OTHER NON EXEMPT COMPLAINTS, COMPLAINT FILED BY PLAINTIFF QUAN, MIKE AS AN INDIVIDUAL AND ALSO AS PROPRIETOR OF PLAYBAR, INC. DBA THE ROOM MAGALLON, JAVIER AS TO DEFENDANT SAN FRANCISCO POLICE DEPARTMENT CITY AND COUNTY OF SAN FRANCISCO MAYOR GAVIN NEWSOM OFFICER LARRY BERTRAND CALIFORNIA DEPARTMENT OF ALCOHOL BEVERAGE CONTRAL STATE OF CALIFORNIA OFFICER MICHELLE OTT DOES 1 TO 100, INCL. SUMMONS ISSUED, JUDICIAL COUNCIL CIVIL CASE COVER SHEET FILED CASE MANAGEMENT CONFERENCE SCHEDULED FOR AUG-27-2010 PROOF OF SERVICE DUE ON MAY-28-2010 CASE MANAGEMENT STATEMENT DUE ON AUG-12-2010	View	370.00

**EXHIBIT B TO
NOTICE OF REMOVAL**

SUMMONS (CITACION JUDICIAL)

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

PLEASE SEE ATTACHED FOR DEFENDANTS

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

MIKE QUAN, as an individual, and also as proprietor of PLAYBAR, INC., dba THE ROOM, and JAVIER MAGALLON

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

RECEIVED
MAYOR'S OFFICE

10 MAR 29 PM 3:56

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): San Francisco County Superior Court

400 McAllister Street

San Francisco, CA 94102

CASE NUMBER:
(Número del Caso):

CF-C-10-498223

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Mark L. Webb, 700 Montgomery Street, San Francisco, CA 94111; 415.434.0500

CLERK OF THE COURT

DATE:
(Fecha)

MAR 29 2010

Clerk, by
(Secretario)

Deputy

ELMS OUT (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):

under: <input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
4. ☐ by personal delivery on (date):

ATTACHMENT TO SUMMONS

NOTICE TO DEFENDANTS:

SAN FRANCISCO POLICE DEPARTMENT, CITY AND COUNTY OF SAN FRANCISCO, MAYOR GAVIN NEWSOM, OFFICER LARRY BERTRAND, CALIFORNIA DEPARTMENT OF ALCOHOL BEVERAGE CONTROL, STATE OF CALIFORNIA, OFFICER MICHELLE OTT, and DOES 1-100, inclusive

FILED
SAN FRANCISCO COUNTY
SUPERIOR COURT

2010 MAR 29 AM 1:03

CLERK OF THE COURT

BY: ~~ELIAS BUTT~~
CLERK

MARK L. WEBB (STATE BAR NO. 67959)
LAW OFFICE OF MARK L. WEBB
700 MONTGOMERY STREET
SAN FRANCISCO, CA 94111
TEL: (415) 434-0500
FAX: (415) 434-0502

Attorney for Plaintiffs

Mike Quan, as an individual, and also as proprietor of Playbar, Inc., dba, The Room, Javier Magallon

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO**

MIKE QUAN, as an individual, and also as
proprietor of PLAYBAR, INC., dba THE
ROOM, and JAVIER MAGALLON,

Plaintiffs,

vs.

SAN FRANCISCO POLICE DEPARTMENT,
CITY AND COUNTY OF SAN
FRANCISCO, MAYOR GAVIN NEWSOM,
OFFICER LARRY BERTRAND,
CALIFORNIA DEPARTMENT OF
ALCOHOL BEVERAGE CONTROL, STATE
OF CALIFORNIA, OFFICER MICHELLE
OTT, and DOES 1-100, inclusive,

Defendants.

Case No.: **CBC-10-498223**

COMPLAINT FOR:

- 1) FRAUD (MAIL)
- 2) ASSAULT AND BATTERY;
WRONGFUL ARREST;
KIDNAPPING
- 3) FALSE IMPRISONMENT
- 4) EMOTIONAL DISTRESS
- 5) INTERFERENCE WITH BUSINESS
OPPORTUNITIES
- 6) RICO

CASE MANAGEMENT CONFERENCE SET

AUG 27 2010 - 9:00 AM

DEPARTMENT 212

GENERAL ALLEGATIONS

Plaintiffs MIKE QUAN, PLAYBAR, INC., dba THE ROOM, and JAVIER
MAGALLON allege as follows:

///

1 1. This court is the proper venue and has jurisdiction to hear this case because the parties
2 are in San Francisco and a RICO case, as held by the U.S. Supreme Court, can be properly
3 brought in a State Court.

4 2. Plaintiff MIKE QUAN is a resident of San Francisco, CA and was, at all times
5 complained of, proprietor of "The Room", a nightclub operated by Playbar, Inc.

6 3. Plaintiff PLAYBAR, INC., is a corporation qualified to do business in
7 California and located within the City of San Francisco.

8 4. Plaintiff JAVIER MAGALLON is a resident of San Francisco, CA and was at all times
9 complained of was employed by Playbar, Inc.

10 5. Defendant SAN FRANCISCO POLICE DEPARTMENT ("the SFPD") is an
11 organization operating as an arm of the CITY AND COUNTY OF SAN FRANCISCO ("CCSF")
12 and on its behalf.

13 6. MAYOR GAVIN NEWSOM has participated, directly or indirectly, in the conduct of a
14 racketeering enterprise's affairs since he has been fully apprised of the misdeeds and criminal
15 acts, including predicate acts, described below. Most recently, during March of 2010 he has
16 been made aware of this series of racketeering activities through cover stories in local
17 newspapers, and through members of his staff. Nevertheless, he refuses to take any action, and
18 therefore has ratified and approved of the conduct complained of herein. As the Mayor of this
19 city, he has direct supervisory powers over the San Francisco Police Department as well as over
20 the ACT's activities within the City and County of San Francisco. His failure even to comment
21 on the clear evidence of abuses and the pattern of racketeering activity described herein,
22 constitutes an act of complicity and, on information and belief, direction that these acts take
23 place. NEWSOM himself is an owner of one or more nightclubs in San Francisco (the Matrix),
24 which has never been disturbed by either the San Francisco Police or the ABC, further pointing
25 to NEWSOM as being directly involved in this pattern of racketeering activity.

26 7. Defendant OFFICER LARRY BERTRAND is an employee of the SFPD, and whose
27 activities and misdeeds described below were and are fully known to his supervisors and
28 commanding officers at the SFPD.

1 8. Defendant THE CALIFORNIA DEPARTMENT OF ALCOHOL BEVERAGE
2 CONTROL ("ABC") is a State licensing bureau operating as an arm of the STATE OF
3 CALIFORNIA.

4 9. Defendants SFPD and the CCSF, as well as ABC and the STATE OF CALIFORNIA, are
5 all public entities.

6 10. MICHELLE OTT is an investigator working on behalf of ABC and was doing so in all
7 instances described below.

8 11. Plaintiffs herein have previously filed the appropriate six-month claim forms against each
9 public entity described above; that is, THE SFPD and ABC. These claim forms are attached as
10 Exhibits 1, 2, 3, and 4.

11 12. BERTRAND and OTT and DOES 1-100 were acting within the course and scope of their
12 duties for SFPD and ABC.

13 13. CCSF, as well as the STATE OF CALIFORNIA, have been provided ample time to
14 review these claims and have rejected them.

15 14. DOES 1 to 100 are currently unknown to Plaintiffs but on information and belief have
16 participated directly or indirectly in this pattern of racketeering activity, including false arrests,
17 assault and battery, kidnappings, improper use of police authority, and other acts complained of
18 herein. When Plaintiffs discover the true names of said DOE defendants, Plaintiffs will ask
19 leave of this court to substitute those names into this complaint.

20 15. Plaintiffs herein allege that all Defendants named above have actively and aggressively
21 participated in a corrupt union to violate the laws of this State and of the Federal Government.
22 Specifically, Defendants have used a pattern of racketeering activity during the past year to
23 intimidate and terrorize certain nightclub operators, party-goers, and party promoters, in order to
24 effectuate an unlawful result in violation of 18 USC 1962(c) prohibiting any person employed by
25 or associated with an enterprise engaged

26 "in or that affects interstate commerce to participate in the
27 enterprise's affairs through a **pattern of racketeering activity**
28 **resulting in injury to claimants' businesses.**"

///

1 16. This pattern of racketeering activity, as will be seen below, has had a direct effect on
2 interstate commerce, including the volume of interstate shipment of alcohol and beverages to
3 nightclubs and nightclub operators that have been victims of this pattern. Specifically, many
4 types of alcohol sold in clubs are imported from different states and even different countries.
5 The acts complained of herein, have had a chilling effect on the sale of those beverages by the
6 intimidation on club operators and their clientele.

7 17. In furtherance of this pattern of racketeering activity, Defendants have knowingly
8 participated in an enterprise designed to interfere with and disrupt Plaintiffs' businesses by use of
9 multiple predicate acts as defined under the United States code. These predicate acts include:
10 A) use of the mail and/or internet to transmit fraudulent criminal charges to certain plaintiffs
11 while knowing that these charges were false or had no reasonable likelihood of being pursued by
12 the prosecuting agencies; B) use of violence and threats of violence in conducting raids on
13 Plaintiffs and their places of business in an attempt to intimidate and suppress the lawful conduct
14 of nightclub operation and party attendants in San Francisco; C) kidnapping; that is, the use of
15 improper force and color of authority to move a person against their will and in custody from one
16 location to another; D) false imprisonment and false arrest; and E) arbitrary and unlawful use of
17 official police power to disrupt the sales of nightclub businesses.

18 **FIRST CAUSE OF ACTION**

19 **(By Javier Magallon for Assault and Battery, Wrongful Arrest, and Kidnapping)**

20 18. Plaintiffs re-allege paragraphs 1 through 17 and incorporate them herein as
21 though fully set forth.

22 19. Mr. Magallon is 30 years old and has worked as a bartender in San Francisco for
23 approximately five years. He has no criminal record and has a meticulous history of compliance
24 with the law in his work as a bartender. On June 19, 2009, he was employed at The Room to
25 work the basement area, which had lawfully been licensed to operate as an extended portion of
26 the bar for purposes of serving clientele.

27 ///

28 ///

1 20. On or about June 19, 2009, Defendants BERTRAND, OTT and others, conducted a
2 forceful and unlawful arrest of Mr. MAGALLON under the pretext of his not having an I.D.
3 They had entered the premises without warrant and without probable cause, knowing that this
4 bar was properly licensed to do business. Conscious that Mr. MAGALLON had a copy of his
5 I.D. in the office upstairs, Defendants nevertheless arrested him, handcuffed him with hands
6 behind his back, and placed him in police custody.

7 21. In the process of placing him in police custody, they dragged him to an area of the bar
8 and physically beat him and assaulted him for no good cause. This beating was captured by a
9 video surveillance camera inside the bar. They then physically moved him, again, with hands
10 cuffed behind him, applying unnecessary force and pain to him while he complied with their
11 requests to leave the premises and enter a police car outside. While in the back seat of the police
12 car, another officer, name unknown, struck him in the head. Thereafter, the police and the
13 Defendants herein transported him to a County jail cell , where he remained for several hours
14 under unlawful arrest.

15 22. He was falsely accused of "resisting arrest and obstructing justice" as an improper basis
16 to take him into custody and transport him to jail. The fact that these charges were false is clear
17 because they were never prosecuted and never even reached the decision level at the District
18 Attorney's office.

19 23. This technique of arrest, detention, kidnapping and lodging of knowingly false charges,
20 has been used on other occasions, both before and after this date. Plaintiffs request leave of
21 Court to amend this complaint when further such evidence is available.

22 24. As a result of this misconduct, Plaintiff was harmed in his person and in his earning
23 capacity in that he was physically and emotionally unable to work for over one month.

24 25. He continues to experience emotional trauma which inhibits his earning capacity to this
25 date.

26 ///

27 ///

28 ///

26. The above conduct constitutes a predicate act as described under the RICO statute in that they were part and parcel of a scheme to defraud Mike Quan, Playbar, Inc., and other nightclub operators in the City of San Francisco of the freedom to conduct lawful business without improper police interference.

SECOND CAUSE OF ACTION

(By Mike Quan, Playbar, Inc., dba The Room, for Fraud by Mail, Unlawful Interruption of Business, Abuse of Police Power, and Destruction and Theft of Property)

27. Plaintiffs re-allege paragraphs 1 through 26 and incorporate them herein as though fully set forth.

28. On or about June 19, 2009, Defendants BERTRAND, OTT, and others, with the consent and approval of their superiors, and in the course and scope of their duties, improperly raided The Room under the pretext and ruse that The Room was improperly licensed to do business on that date. In truth, ABC had granted to MIKE QUAN and his nightclub the right to serve alcohol and do business in that portion of The Room where the acts complained of took place. Therefore, the raid perpetrated by Defendants was improper at the outset.

29. On that date and at that time, Defendants, under improper color of authority, shut down Plaintiff QUAN's business, confiscated dozens of bottles of alcohol by maliciously emptying their contents for no reason (also on videotape), and seized and destroyed musical and DJ equipment being used to entertain the clientele there that night (also captured on videotape.)

30. Mr. QUAN was unlawfully and improperly cited with an infraction, "serving poisonous beverages", which infraction was dismissed and never brought to court by the D.A.

31. This activity constitutes another predicate act since Defendants used the mail and/or email to inform Mr. QUAN of this fraudulent charge.

32. The activities complained of in both the First and Second Causes of Action above had an affect on interstate commerce not only by virtue of use of the mail, but because the nightclub industry is served by alcoholic beverage transported in interstate commerce and sold to the public.

///

1 33. As a result of the activities above, Mr. QUAN has been forced to continue to pay rent and
2 other expenses to his landlord under a lease contract for these premises, in spite of the fact that
3 he can no longer remain open for business. Further, Mr. QUAN spent an excess of \$400,000 in
4 reliance of the ABC assurance that this premises could be used as a nightclub. This sum of
5 money is not recoverable since it was used to improve the premises as a club that would be
6 allowed to operate by the ABC and the SFPD.

7 34. Mr. QUAN continues to pay rent as described above and his damages are ongoing on a
8 monthly basis, as his club remains closed. These damages will be presented in court according
9 to proof.

10 **THIRD CAUSE OF ACTION**
11 **(By All Plaintiffs – RICO)**

12 35. Plaintiffs re-allege paragraphs 1 through 34 and incorporate them herein as
13 though fully set forth.

14 36. Additional predicate acts are as follows:

15 37. **Arash Ghanadan** – In approximately December 2008 or January 2009, Arash
16 Ghanadan, a 27-year-old engineer for Hewlett-Packard, had thrown a private party in SOMA
17 which was raided by SFPD. SFPD Officer LARRY BERTRAND arrived at the scene as
18 Ghanadan was outside walking a guest to her car. Officer BERTRAND demanded to be let into
19 the party and asked to see Ghanadan's permits. Ghanadan refused to allow him to enter the
20 private party without a warrant, telling the officer that no admission had been charged to any of
21 the guests inside. Officer BERTRAND placed Ghanadan in handcuffs and forced him to kneel
22 in a filthy, needle-strewn alley, and kicked his legs several times. This constituted unlawful
23 assault and battery, as well as a wrongful arrest. Officer BERTRAND had called for back-up,
24 and ten officers and members of the San Francisco Fire Department arrived to force open the
25 door to the party. Ghanadan was improperly and unlawfully cited for running an afterparty
26 without a permit, even though no permit was necessary since the party was in his own private
27 premises and no sale of liquor was involved. He was also cited for "obstructing an
28

1 investigation” for not allowing BERTRAND to enter the private party without a warrant. All
2 charges were dismissed for insufficient evidence.

3 In June, 2009, Ghanadan was a guest at another party at a loft on Folsom Street in San
4 Francisco’s South of Market (SOMA) district after a DJ party he had promoted at a SOMA
5 nightclub. At approximately 2:30 a.m., police arrived and began to raid the party. Ghanadan
6 again came face-to-face with Defendant Officer LARRY BERTRAND.

7 Officer BERTRAND called Ghanadan out by name, and told him that he would be taking
8 him to jail. He told Ghanadan he was arresting him for throwing another party without proper
9 permits and placed him in handcuffs. Ghanadan told Officer BERTRAND that he had nothing to
10 do with this party, that he was merely a guest, but BERTRAND paid him no attention, and
11 ordered the other officers at the site to release all the other party-goers.

12 While under arrest, Ghanadan was again sworn at by Officer BERTRAND, and his cell
13 phone was seized, along with alcohol and DJ equipment confiscated from the party by the SFPD.
14 Officer BERTRAND told Ghanadan was going to jail this time for running an after hours party
15 without a permit. BERTRAND made this statement despite knowing that Ghanadan was only a
16 guest at this party and had no responsibility to take out a permit. BERTRAND’s activities on
17 this occasion constituted assault and battery, wrongful arrest, and mail fraud – by using the mails
18 to send the phony citation. These acts were part of a pattern of racketeering activity in violation
19 of RICO.

20 **38. Club Caliente/Maurice Salinas** – Club Caliente has been owned and operated by
21 businessman Maurice Salinas in San Francisco for over 10 years. It has been a thriving
22 nightclub frequented and enjoyed often by the Latin community as its most popular Latino
23 nightclub. Mr. Salinas has been at the 11th Street location for approximately 10 years, lawfully
24 running his nightclub without violating laws and in service of his community. Starting in
25 approximately September and October 2009, Officer LARRY BERTRAND of SFPD and
26 investigator MICHELLE OTT of the ABC began to “raid” his club to look for violations. Using
27 the now familiar pattern and ruse of ABC authority, these raids have been without warrant and
28 without probable cause, under the pretext of finding liquor violations. Mr. Salinas has

consistently been meticulous about observing liquor laws and specifically has spent substantial funds to install high-tech equipment to check identification cards and ensure that no minors are allowed into the club. Knowing this, BERTRAND and OTT nevertheless have insisted on numerous weekends that they enter and interrogate Mr. Salinas' clientele, many of whom are not fluent in English and are understandably frightened by the prospect of police action during their recreational time, paid for by hard earned money. On more than one occasion, BERTRAND and OTT, with the knowledge of their superiors, including Police Commander Dudley and MAYOR GAVIN NEWSOM, lined clients of Club Caliente against the wall to intimidate and harass them, essentially arresting them unlawfully to view their identification cards. The impact of this procedure was to malign Club Caliente, Mr. Salinas, and its lawful audience, who were there to have fun on a weekend.

Despite numerous such raids, the invading officers managed to "uncover" a single infraction: one customer used his brother's I.D. card, claiming he was over 21 to gain entry. For this reason, Mr. Salinas was cited and fined, bullied, intimidated, and yelled at on the spot.

The inevitable consequence of this police activity, given this clientele, has caused Caliente's business to be reduced to the extent of extinction. Caliente is now permanently closed and Mr. Salinas' 15-year old business venture has been ruined. This condition is known to BERTRAND, OTT, higher ups to be named later of the ABC, including staff at the Mayor's office, and MAYOR NEWSOM himself.

39. **Mist/Mike Quan** – Mist is a nightclub owned and operated by Mike QUAN, also owner of The Room. Mist is located on 11th Street in San Francisco. Since Mr. QUAN timely filed a Notice of Intent to Sue regarding The Room against SFPD, BERTRAND and other officers, as well as the ABC, OTT and other investigators, both BERTRAND and OTT have on a **weekly basis** paid harassing and intimidating visits on Mist. Typically, these officers, wearing weapons and badges, enter the premises without warrant to allegedly investigate ABC violations, which they never find. Mr. QUAN's clientele largely consists of upper middle class Asians from throughout the Bay Area. The regular intrusion of police presence into this club for no valid reason is **retaliatory, vindictive**, and in furtherance of a pattern of racketeering activity,

1 including extortion. Mr. QUAN has been most recently visited on Valentine's Day Eve, February
2 13, 2010, when Investigator OTT insisted on entry into Mist, bypassing the numerous security
3 guards whose job it is to make sure that no one underage enters the club. OTT, knowing full
4 well that the security is in charge of checking I.D.s, interrogated a woman whose job it was, as
5 an employee of the promoter of this event, simply to take tickets. OTT intimidated this
6 employee and asked her how she knew that everybody was over 21. This constituted clear
7 harassment and another predicate act in the context of the pattern of racketeering activity.

8 Less than two hours later, at approximately 1:45 a.m., February 14, 2010, OTT,
9 BERTRAND and other officers returned with three squad cars. These cars were positioned
10 across the street from Mist with red and blue lights flashing at a time when the clientele at all the
11 clubs on 11th Street were leaving in **compliance with the 2 a.m. close requirement**. At
12 approximately 1:50 a.m., OTT summoned Mr. QUAN across the street from his club and
13 accused him of "loitering". He was told that he was in violation of the law because his clients,
14 all leaving the club before closing time, weren't dispersing fast enough to please the police. Mr.
15 QUAN was issued a citation and ordered to appear in court March 12, 2010. It is expected that
16 this too will result in "a not valid ticket" that is consistent with the patter described above.

17 As a consequence of this pattern of harassment intimidation and extortion, Mr. QUAN's
18 business at Mist has diminished substantially, to the point where he is now considering closing
19 his club. His clientele has been reduced as a consequence of the fear imposed by the regular
20 unlawful and malicious weekend visits of these officers.

21 40. **Azul/John Bauer** – Mr. Bauer is the owner of Azul. He is approximately 50 years old, a
22 husband and a father, with two small children, who has made Azul into a moderately successful
23 venue in a high profile neighborhood in San Francisco. Because he lives with his family on the
24 Peninsula, he chose to sell Azul and use the money from the sale to open a club closer to his
25 home in order to spend more time with his wife and children. Relying on the traditional and
26 perennial 2:00 a.m. closure allotted in person-to-person transfers of liquor licenses, he entered
27 into a contract for sale of Azul for approximately \$450,000. When ABC spontaneously and
28 arbitrarily changed the liquor license closure time to midnight, they automatically reduced the

1 value of his club, without good cause. As a result, Mr. Bauer has not been able to complete this
2 transaction and is now forced to continue to operate the club himself, costing him the revenues
3 from the sale.

4 Had this deal gone through, it is expected that the new ownership would have created
5 dozens of new jobs for now unemployed persons in this city.

6 **41. Siobhan Heffernan** – Ms. Heffernan is a professional promoter's assistant, and has been
7 employed in San Francisco for many years. She is paid by the promoter of private events to
8 ensure that only invited persons are allowed entry into private parties. In this regard, it is her job
9 to position herself at the front entrance and check names and I.D.s.

10 On or about Saturday, November 28, 2009, Ms. Heffernan was lawfully employed at a
11 birthday party in the tony South of Market District of San Francisco, on Stevenson Street near
12 Seventh Street. The guests were typically dressed and well behaved. Nothing in the form of
13 violence, misbehavior, or even loud noise, was remotely a problem at this event. Nor were their
14 any people congregating on the sidewalk outside.

15 At approximately 3:00 a.m., Officer LARRY BERTRAND of the SFPD and a female
16 officer believed to have been MICHELLE OTT of the ABC, arrived at the front door and
17 accosted Ms. Heffernan. Officer BERTRAND, unknown to Ms. Heffernan as a police officer
18 since he was not in uniform, demanded entry for him and his partner. Ms. Heffernan, doing her
19 job, informed the two that if they were not invited guests, they could not be allowed in. Officer
20 BERTRAND thereupon displayed his badge and in a belligerent tone of voice stated to Ms.
21 Heffernan: "We're SFPD. We can go wherever the f*** we like."

22 At this point, BERTRAND and OTT walked past Ms. Heffernan through the door and
23 proceeded to arrest Ms. Heffernan, who had never before been arrested in her entire life.

24 OTT place Ms. Heffernan in handcuffs behind her back and told her to sit down on some
25 steps and stay there. Both BERTRAND and OTT took Ms. Heffernan's purse and conducted an
26 unwarranted and unlawful search and seizure of its contents.

27 ///

28 ///

1 Next, the officers approached another employee of the event promoter and similarly
 2 forced him to sit down next to Ms. Heffernan. After that, the officers spent some time inside the
 3 party, presumably interrogating guests. To Ms. Heffernan's knowledge, the party involved an
 4 "open bar," meaning that no money was exchanged for alcohol.

5 Thereafter, a number of SFPD squad cars surrounded the premises. The officers went in
 6 and ordered all the guests out, shutting down the party. Ms. Heffernan was cited for "running an
 7 illegal party" and ordered to appear in court several weeks later. When she appeared in court,
 8 she learned that the charges had been completely dropped.

9 Ms. Heffernan worked in this capacity at weekend parties for more than five years, using
 10 the income from this job to supplement her day job as a caregiver for the City of San Francisco,
 11 by whom she has been employed for three years.

12 She has observed that since the above-described event of November 2009, she has not
 13 been employed to work at private parties. She knows the reason is that few, if any, private
 14 parties are not being held since "everyone is afraid of being busted by Larry."

15 The above course of racketeering conduct has damaged Ms. Heffernan's income and
 16 business opportunities and has generally "devastated the art and music communities in this city."

17 PRAYER

- 18 1. For economic damages according to proof for MIKE QUAN and PLAYBAR, INC.,
 19 in excess of \$2,000,000.
- 20 2. For economic and personal injury damages to JAVIER MAGALLON according to
 21 proof in excess of \$1,000,000;
- 22 3. Treble damages in accordance with the RICO provision in conjunction with the Third
 23 Cause of Action, making the above claim in excess of \$9,000,000;
- 24 4. For punitive damages against Defendants GAVIN NEWSOM, LARRY BERTRAND,
 25 and MICHELLE OTT, according to proof;
- 26 5. For reasonable attorney's fees as afforded by statute;

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2 6. For such other and further relief as the Court may deem appropriate.

3 Dated: March 29, 2010

4 By: 

5 MARK L. WEBB
6 Attorney for Plaintiffs
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EXHIBIT 1

DEC 15 2009

RECEIVED

**CLAIM AGAINST THE STATE OF CALIFORNIA, ALCOHOLIC BEVERAGES
CONTROL, OFFICER MICHELLE OTT AND OTHERS YET UNKNOWN**

- 1. Claimants' Names and Business Addresses:** Mike Quan & Playbar, Inc. 520 6th Street, San Francisco, CA 94103
- 2. Send Official Notices and Correspondence to:** Mark L. Webb, Esq., 700 Montgomery Street, San Francisco, California 94111
- 3. Date of Birth:** 01/15/65
- 4. Social Security Number:** 552-67-9334
- 5. Date of Incident:** June 19, 2009
- 6. Time of Incident (AM or PM):** 11:45 PM
- 7. Location of Incident or Accident:** 101 6th Street, San Francisco, California 94103
- 8. Claimant Vehicle License Plate #, Type and Year:** N/A
- 9. Basis of Claim:**

On the above date and time, San Francisco Police Department officer Larry Bertrand and ABC state officer Ms. Michelle Ott unlawfully raided and shut down claimant's place of business, Playbar, Inc. also known as "The Room" located at the corner of 6th and Mission.

Bertrand and Ott improperly closed the premises for what they said was for lack of proper licensing. In fact, however, claimant's establishment was properly licensed and claimant had retained the services of two attorneys to ensure that he had all the necessary permits to operate his business legally. These permits were on file at the time of this raid and were known to Bertrand and Ott.

As a result, claimant has been unable to continue operating his business since June 19, 2009. He has incurred loss of revenue amounting to at least \$300,000, while continuing to have to pay expenses, eg. rent under his lease. These expenses amount to approximately \$60,000. Further the above officers unlawfully confiscated and failed to return several dozens of bottles of a legally stored in the basement of claimant's establishment. (See Exhibit "1") On the same occasion, these officers unlawfully poured the contents of dozens of bottles of alcoholic beverages without license or warrant (See Exhibit "2") They also unlawfully seized valuable stereo and dj equipment breaking components. These same officers unlawfully charge claimant with civil and criminal violations, which although cited were never filed. (See Exhibit "3")

The above acts were done under color of authority, in violation of claimant's civil rights and interference with claimant's legitimate business relations. Also, claimant was defrauded by CCSF representatives who informed him that his business was fully licensed as a nightclub and bar.

10. Description of Claimant's injury, property damage or loss:

The damages sustained include lost revenues from the improper closure of claimant's business, emotional distress from the unlawful and violent nature of this raid. The cost of lost alcohol and loss of reputation in the business community by virtue of defamation of character.

11. Amount of Claimant's property damage or loss and method of computation. Attach supporting documentation. (See Instructions):

It is believed that the damages for unconstitutional conduct as described above are in the excess of one million of dollars.

Court Jurisdiction: Unlimited Civil

12. Witnesses (if any) Name: Javier Magallon; Hanh Nguyen; Sean Greer

Miguel
Signature of Claimant or Representative

Dec 14, 2009
Date

Mile Juan
Print Name

Relationship to
Claimant

29



Young's Market Company



THE ESTATES GROUP
SURVEYORS OF WINES AND SPIRITS

PAGE

PLEASE REMIT TO

OFFICE ADDRESS

THE RUBIN
PLAYBAR INC
101 4TH STREET

607

FD-302a
100-406546Z-

INVOICE NO.	INVOICE DATE
LICENSE	DATE DUE
SALESMAN NO.	

QTY. SHIPPED CASES	BT.	PRODUCT NO.	PACK	SIZE	DESCRIPTION	NET		ORDERED	SUG. BTL SELL	CASE PRICE	DISC. SCH.	DISC. PER CASE	NET EXTENSION
						BTL PRICE	ORDERED						
2		29213	12	1 LTR	CASILLI LIGHT RUM UPC: 080400065700	1.00	20	4.50	7.00	51.00	100	0.00	100.00
3		712510	12	1 LTR	KRISTIA VODKA 50 UPC: 089105021356	1.25	30	7.00	51.00	51.00	100	0.00	100.00
1		142526	3	750 ML	EVON RUM 50 UPC: 95.477907144	24.90	15	33.20	147.40				24.90
1		448222	10	750 ML	PLATE MENTHOL 75 UPC: 094788071095	11.00	15	13.12	130.00				11.00
1		110127	12	750 ML	NEVE MENTHOL 75 UPC: -17488520024	10.25	15	12.37	124.50				10.25
1		371124	12	750 ML	KODUNE ROSE 75 UPC: 08470405 75	11.75	15	10.77	106.20				11.75
1		610112	12	1 LTR	STOLI ROBERT 75 UPC: 089340475313	23.00	40	32.50	317.20				23.00
1		900015602	1	COMB	SVEDKA RASPBERRY IC UPC: 094944579495	119.20	17	57.50	101.70	101.70	100	0.00	101.70
1		163813	12	1 LTR	SVEDKA RASPBERRY UPC: 617728124105	119.20	10	57.50	101.70	101.70	100	0.00	101.70
1		900015992	1	COMB	SVEDKA VODKA 50 IC UPC: 094944579495	119.20	10	57.50	101.70	101.70	100	0.00	101.70
1		162710	12	1 LTR	SVEDKA VODKA 50 UPC: 617728111105	119.20	10	57.50	101.70	101.70	100	0.00	101.70
1		900015597	1	COMB	SVEDKA CITRON VODKA IC UPC: 094944579495	119.20	10	57.50	101.70	101.70	100	0.00	101.70
TOTAL								GROSS AMOUNT		TOTAL DISC.		NET AMOUNT	

SEE REVERSE SIDE

PLEASE PAY THIS AMOUNT

CASE WEIGHT

BOTTLE WEIGHT

INVOICE NO.**INVOICE DATE**

ACCT. #

NEI AMPL.

X
PRINT
NAME

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Young's Market Company



THE ESTATES GROUP
PURVEYORS OF WINES AND SPIRITS

CUSTOMER ORIGINAL

PLEASE REMIT TO:
OFFICE ADDRESS:

PAGE.

THE ROOM,
FLAVOIR 304
101 SOUTH STREET

7A-00000
020-1000-020

INVOICE NO.	INVOICE DATE
LICENSE	DATE DUE
SALESMAN NO.	

QTY. SHIPPED		PRODUCT NO.	PACK	SIZE	DESCRIPTION	NET BTL PRICE	ORDERED	SUG. BTL. SELL	CASE PRICE	DISC. SCH.	DISC. PER CASE	NET EXTENSION
ASSETS	BT.											
1	1	1A2613	12	LTR	SWEETENED 241100N VODKA							
					UPC: 999999999999							
		9000013603	1	COMB	SWEETENED VANILLA IC							
				10	UPC: 999999999999	118.20	10157.00	101.40	201		99.20	
1	1	1A2614	12	LTR	SWEETENED VANILLA							
				11	UPC: 999999999999							
		9000013601	1	COMB	SWEETENED CLEMENTINE IC							
				12	UPC: 999999999999	118.20	10157.00	101.40	201		99.20	
1	1	1A2613	12	LTR	SWEETENED CLEMENTINE							
				14	UPC: 617345151006							
<div style="display: flex; justify-content: space-between;"> <div> <p>UNDER 32.9949</p> <p>OVER 40000</p> </div> <div> <p>T 30</p> <p>B 30</p> <p>D 30</p> </div> <div> <p>GROSS AMOUNT 10721.89</p> <p>TOTAL DISC. 3801.00</p> <p>NET AMOUNT 1192.89</p> </div> </div>												

SEE REVERSE SIDE

PLEASE PAY THIS AMOUNT -

INVOICE NO.**INVOICE DATE**

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Figure 1

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Figure 1

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Figure 1

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412-5688-64

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22-11-19

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1. The first step is to identify the problem or question that needs to be addressed. This involves understanding the context and the specific requirements of the task.

ABC 303 (10/98)

NONTRAFFIC

No.

Date of Violation

Time

Telephone Number

6/19/07

AM
PM

730-331-

Name (First, Middle, Last)

J. K. ...

Address

City

State

Zip Code

3206

St. 24

Frisco

7410

Drivers License No.

State

Birthdate

TX # 0404

1

11/15/65

Sex

Hair

Eyes

Height

Weight

Other Des.

M

Bk

Brn

5'10"

140

A

Violation(s)

Code/Ordinance

Description

2300/2345

Evading License

Lic. 50

Rev / S. L. ...

...

...

347

D. R. ...

...

...

...

...

...

...

...

Evidence Seized

Receipt No.

☐ Booking Required

...

...

Location of Violation(s)

City of Occurrence

11615

...

☐ Violation(s) not committed in my presence, declared on information and belief.
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Arresting or Issuing Officer

Date 6/19/07

Name of Arresting Officer, if different from Issuing Officer.

Without admitting guilt, I promise to appear at the time and place indicated below.

X Signature

WHEN: Date:

Time:

AM PM

WHAT TO DO: Following the instructions on the reverse.

WHERE: ☐ Municipal Court☐ Consolidated Court☐ Juvenile Dept.

Court/Department:

Street:

City:

Phone:

☐ To be notified

SEE REVERSE

☐ You may arrange with the clerk to appear at a night session of the court. TR-120

Form approved by the Judicial Council of California, 10-30-98, Penal Code 853.9

No.

EXHIBIT 2

DEC 15 2009

**CLAIM AGAINST THE STATE OF CALIFORNIA, RECEIVED BEVERAGES
CONTROL, OFFICER MICHELLE OTT AND OTHERS YET UNKNOWN**

1. **Claimants' Names and Home Addresses:** Javier Magallon, 1164 Deharo Street, San Francisco, California 94107
2. **Send Official Notices and Correspondence to:** Mark L. Webb, Esq., 700 Montgomery Street, San Francisco, California 94111
3. **Date of Birth:** 08/26/30
4. **Social Security Number:** 547-65-0871
5. **Date of Incident:** June 19, 2009
6. **Time of Incident (AM or PM):** 11:45 PM
7. **Location of Incident or Accident:** 101 6th Street, San Francisco, California 94103
8. **Claimant Vehicle License Plate #, Type and Year:** N/A
9. **Basis of Claim:**

On June 19, 2009, claimant was the victim of an unlawful assault and battery by San Francisco Police Officer Larry Bertrand and ABC State Officer Michelle Ott. On that date at approximately 11:45 pm both Bertrand and Ott unlawfully and without legal cause arrested claimant and beat him after cuffing his hands behind his back. After placing him in police custody, they transported him to jail, falsely and fraudulently charging him with resisting a peace officer and obstructing a peace officer (See attached Exhibit "1" Citation).

He was then kept in custody for several hours. No formal charges were ever brought by the district attorney. These acts were conducted in clear violation of claimant's civil rights and consisted of unlawful arrest battery and wrongful detention.

10. Description of Claimant's injury, property damage or loss:

The injuries sustained are emotional distress, bruises and cuts. Claimant also suffered loss wages for approximately 45 days. Claimant is unaware at this time of the total damages sustained at this time.

11. Amount of Claimant's property damage or loss and method of computation. Attach supporting documentation. (See Instructions):

It is believed that the damages for unconstitutional conduct as described above are approximately \$100,000.

**CLAIM AGAINST THE STATE OF CALIFORNIA, ALCOHOLIC BEVERAGES
CONTROL, OFFICER MICHELLE OTT AND OTHERS YET UNKNOWN**

- 1. Claimants' Names and Home Addresses:** Javier Magallon, 1164 Deharo Street, San Francisco, California 94107
- 2. Send Official Notices and Correspondence to:** Mark L. Webb, Esq., 700 Montgomery Street, San Francisco, California 94111
- 3. Date of Birth:** 08/26/30
- 4. Social Security Number:** 547-65-0871
- 5. Date of Incident:** June 19, 2009
- 6. Time of Incident (AM or PM):** 11:45 PM
- 7. Location of Incident or Accident:** 101 6th Street, San Francisco, California 94103
- 8. Claimant Vehicle License Plate #, Type and Year:** N/A
- 9. Basis of Claim:**

On June 19, 2009, claimant was the victim of an unlawful assault and battery by San Francisco Police Officer Larry Bertrand and ABC State Officer Michelle Ott. On that date at approximately 11:45 pm both Bertand and Ott unlawfully and without legal cause arrested claimant and beat him after cuffing his hands behind his back. After placing him in police custody, they transported him to jail, falsely and fraudulently charging him with resisting a peace officer and obstructing a peace officer (See attached Exhibit "1" Citation).

He was then kept in custody for several hours. No formal charges were ever brought by the district attorney. These acts were conducted in clear violation of claimant's civil rights and consisted of unlawful arrest battery and wrongful detention.

10. Description of Claimant's injury, property damage or loss:

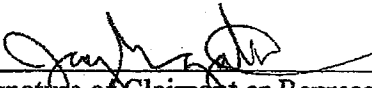
The injuries sustained are emotional distress, bruises and cuts. Claimant also suffered loss wages for approximately 45 days. Claimant is unaware at this time of the total damages sustained at this time.

11. Amount of Claimant's property damage or loss and method of computation. Attach supporting documentation. (See Instructions):

It is believed that the damages for unconstitutional conduct as described above are approximately \$100,000.

Court Jurisdiction: Unlimited Civil

12. Witnesses (if any) Name: Sean Greer and Christian (last name unknown)


Signature of Claimant or Representative

12/14/09
Date

Javier Magallon
Print Name

Relationship to Claimant


STATE OF CALIFORNIA DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL NOTICE TO APPEAR <input checked="" type="checkbox"/> MISDEMEANOR						
ABC 303 (10/98)		NONTRAFFIC		No.		
Date of Violation	Time	<input checked="" type="checkbox"/> AM <input type="checkbox"/> PM		Telephone Number		
6/11/07	7345			415-697-3		
Name (First, Middle, Last)						
Ja y A nider Maga						
Address		City	State	Zip Code		
1164 Delano St		San Francisco	CA	94117		
Drivers License No.		State	Birthdate			
CDL# 88397178 (B-P)		CA	8/2/79			
Sex	Hair	Eyes	Height	Weight	Other Des.	
M	B	Bv	5-8	170		
Violation(s)		Code/Ordinance		Description		
148(a)				Obstructing a Peace Officer		
148(b)(1) P				Resisting a Peace Officer		
Evidence Seized		Receipt No.		<input type="checkbox"/> Booking Required		
N/A		A				
Location of Violation(s)		City of Occurrence				
6 - Street, San Francisco		94117				
<input type="checkbox"/> Violation(s) not committed in my presence, declared on information and belief. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.						
Arresting or Issuing Officer				Date		
				7		
Name of Arresting Officer, if different from Issuing Officer.						
Without admitting guilt, I promise to appear at the time and place indicated below.						
<input checked="" type="checkbox"/> Signature 						
WHEN: Date:		August 11, 2007		Time:		8:00 <input checked="" type="checkbox"/> AM <input type="checkbox"/> PM
WHAT TO DO: Following the instructions on the reverse.						
WHERE: <input type="checkbox"/> Municipal Court <input type="checkbox"/> Consolidated Court <input type="checkbox"/> Juvenile Dept.						
Court/Department: San Francisco Superior Court						
Street: 350 Bryant P. Hill						
City: San Francisco Phone:						
<input type="checkbox"/> To be notified 415-553-9399 SEE REVERSE						
<input type="checkbox"/> You may arrange with the clerk to appear at a night session of the court. TR-120						
Form approved by the Judicial Council of California, 10-30-98, Penal Code 853.9						
No.						

EXHIBIT 3

**CLAIM AGAINST THE CITY AND COUNTY OF SAN FRANCISCO, SAN
FRANCISCO POLICE DEPARTMENT, OFFICER LARRY BERTRAND AND OTHERS
YET UNKNOWN**

1. Claimants' Names and Business Addresses: Mike Quan & Playbar, Inc. 520 6th Street,
San Francisco, CA 94103

2. Send Official Notices and Correspondence to: Mark L. Webb, Esq., 700 Montgomery
Street, San Francisco, California 94111

3. Date of Birth: 01/15/65

4. Social Security Number: 552-67-9334

5. Date of Incident: June 19, 2009

6. Time of Incident (AM or PM): 11:45 PM

7. Location of Incident or Accident: 101 6th Street, San Francisco, California 94103

8. Claimant Vehicle License Plate #, Type and Year: N/A

9. Basis of Claim:

On the above date and time, San Francisco Police Department officer Larry Bertrand and ABC state officer Ms. Michelle Ott unlawfully raided and shut down claimant's place of business, Playbar, Inc. also known as "The Room" located at the corner of 6th and Mission.

Bertrand and Ott improperly closed the premises for what they said was for lack of proper licensing. In fact, however, claimant's establishment was properly licensed and claimant had retained the services of two attorneys to ensure that he had all the necessary permits to operate his business legally. These permits were on file at the time of this raid and were known to Bertrand and Ott.

As a result, claimant has been unable to continue operating his business since June 19, 2009. He has incurred loss of revenue amounting to at least \$300,000, while continuing to have to pay expenses, eg. rent under his lease. These expenses amount to approximately \$60,000. Further the above officers unlawfully confiscated and failed to return several dozens of bottles of a legally stored in the basement of claimant's establishment. (See Exhibit "1") On the same occasion, these officers unlawfully poured the contents of dozens of bottles of alcoholic beverages without license or warrant (See Exhibit "2") They also unlawfully seized valuable stereo and dj equipment breaking components. These same officers unlawfully charge claimant with civil and criminal violations, which although cited were never filed. (See Exhibit "3") discarded

The above acts were done under color of authority, in violation of claimant's civil rights

RECEIVED
09 DEC 14 PM 2:42
CITY & COUNTY OF
SAN FRANCISCO
CONTROLLER

and interference with claimant's legitimate business relations. Also, claimant was defrauded by CCSF representatives who informed him that his business was fully licensed as a nightclub and bar.

10. Description of Claimant's injury, property damage or loss:

The damages sustained include lost revenues from the improper closure of claimant's business, emotional distress from the unlawful and violent nature of this raid. The cost of lost alcohol and lost of reputation in the business community by virtue of defamation of character.

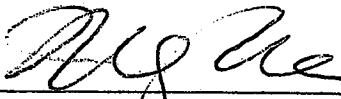
11. Amount of Claimant's property damage or loss and method of computation. Attach supporting documentation. (See Instructions):

It is believed that the damages for unconstitutional conduct as described above are in the excess of one million of dollars.

brea

Court Jurisdiction: Unlimited Civil

12. Witnesses (if any) Name: Javier Magallon; Hanh Nguyen; Sean Greer



Signature of Claimant or Representative

Dec 14, 2009

Date

MIKE QUAN

Print Name

Relationship to
Claimant

EXHIBIT 4

**CLAIM AGAINST THE CITY AND COUNTY OF SAN FRANCISCO, SAN
FRANCISCO POLICE DEPARTMENT, OFFICER LARRY BERTRAND AND OTHERS
YET UNKNOWN**

- 1. Claimants' Names and Home Addresses:** Javier Magallon, 1164 Deharo Street, San Francisco, California 94107
- 2. Send Official Notices and Correspondence to:** Mark L. Webb, Esq., 700 Montgomery Street, San Francisco, California 94111
- 3. Date of Birth:** 08/26/30
- 4. Social Security Number:** 547-65-0871
- 5. Date of Incident:** June 19, 2009
- 6. Time of Incident (AM or PM):** 11:45 PM
- 7. Location of Incident or Accident:** 101 6th Street, San Francisco, California 94103
- 8. Claimant Vehicle License Plate #, Type and Year:** N/A
- 9. Basis of Claim:**

On June 19, 2009, claimant was the victim of an unlawful assault and battery by San Francisco Police Officer Larry Bertrand and ABC State Officer Michelle Ott. On that date at approximately 11:45 pm both Bertand and Ott unlawfully and without legal cause arrested claimant and beat him after cuffing his hands behind his back. After placing him in police custody, they transported him to jail, falsely and fraudulently charging him with resisting a peace office and obstructing a peace officer (See attached Exhibit "1" Citation).

He was then kept in custody for several hours. No formal charges were ever brought by the district attorney. These acts were conducted in clear violation of claimant's civil rights and consisted of unlawful arrest battery and wrongful detention.

10. Description of Claimant's injury, property damage or loss:

The injuries sustained are emotional distress, bruises and cuts. Claimant also suffered loss wages for approximately 45 days. Claimant is unaware at this time of the total damages sustained at this time.

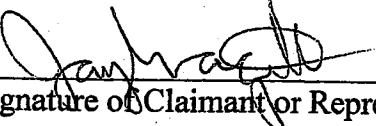
11. Amount of Claimant's property damage or loss and method of computation. Attach supporting documentation. (See Instructions):

It is believed that the damages for unconstitutional conduct as described above are approximately \$100,000.

RECEIVED
CITY & COUNTY OF
SAN FRANCISCO
CONTROLLER
09 DEC 14 PM 2:40

Court Jurisdiction: Unlimited Civil

12. Witnesses (if any) Name: Sean Greer and Christian (last name unknown)



Signature of Claimant or Representative



12/14/09

Date

Javier Magallon

Print Name

Relationship to
Claimant

STATE OF CALIFORNIA DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL NOTICE TO APPEAR <input checked="" type="checkbox"/> MISDEMEANOR						
ABC 303 (10/98)		NONTRAFFIC		No. 68473		
Date of Violation	Time	Telephone Number				
6/19/09	2345	415-699-5213				
Name (First, Middle, Last) Javier Alexander Magallon						
Address		City	State	Zip Code		
1164 Delmaro St.		San Francisco	CA	94107		
Drivers License No.		State	Birthdate			
CDL# 88397178 (Susp.)		CA	8/26/79			
Sex	Hair	Eyes	Height	Weight	Other Des.	
M	Blk	Brn	5-8	170	O	
Violation(s)		Code/Ordinance		Description		
148(a)(1) PC				Obstructing a Peace Officer		
148(a)(1) PC				Resisting a Peace Officer		
Evidence Seized						
None		Receipt No.		<input type="checkbox"/> Booking Required		
Location of Violation(s)		City of Occurrence				
101 6TH Street		San Francisco 94103				
<input type="checkbox"/> Violation(s) not committed in my presence; declared on information and belief. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.						
Arresting or Issuing Officer		M. O'H #713		Date 6/19/09		
Name of Arresting Officer, if different from Issuing Officer.						
Without admitting guilt, I promise to appear at the time and place indicated below.						
<input checked="" type="checkbox"/> Signature 						
WHEN: Date:		August 11, 2009		Time: 8:00		<input checked="" type="checkbox"/> AM <input type="checkbox"/> PM
WHAT TO DO: Following the instructions on the reverse.						
WHERE: <input type="checkbox"/> Municipal Court		<input type="checkbox"/> Consolidated Court		<input type="checkbox"/> Juvenile Dept.		
Court/Department: San Francisco Superior Court						
Street: 950 Bryant St. Room 475						
City: San Francisco Phone:						
<input type="checkbox"/> To be notified		(415) 553-9395		SEE REVERSE		
<input type="checkbox"/> You may arrange with the clerk to appear at a night session of the court. TR-120						
Form approved by the Judicial Council of California, 10-30-98, Penal Code 853.9						
				No. 68473		



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

Document Scanning Lead Sheet

Apr-15-2010 11:48 am

Case Number: CGC-10-498223

Filing Date: Apr-01-2010 4:19

Juke Box: 001 Image: 02821028

ONS ON COMPLAINT, PROOF OF SERVICE ONLY, FILED BY PLA

MIKE QUAN et al VS. SAN FRANCISCO POLICE DEPARTMENT et al

001C02821028

Instructions:

Please place this sheet on top of the document to be scanned.

POS-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Mark L. Webb, Bar #67959 Law Office of Mark L. Webb 700 Montgomery Street San Francisco, CA 94111 TELEPHONE NO.: 415.434.0500 FAX NO. (Optional): 415.434.0502 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Plaintiffs Mike Quan, et al.		FOR COURT USE ONLY FILED Superior Court of California County of San Francisco APR - 1 2010 CLERK OF THE COURT BY: <i>[Signature]</i> Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco STREET ADDRESS: 400 McAllister Street MAILING ADDRESS: CITY AND ZIP CODE: San Francisco, CA 94102 BRANCH NAME:		
PLAINTIFF/PETITIONER: Mike Quan, et al. DEFENDANT/RESPONDENT: San Francisco Police Department, et al.		CASE NUMBER: CGC-10-498223
PROOF OF SERVICE OF SUMMONS		Ref. No. or File No.:

(Separate proof of service is required for each party served.)

- At the time of service I was at least 18 years of age and not a party to this action.
- I served copies of:
 - ☒ summons
 - ☒ complaint
 - ☒ Alternative Dispute Resolution (ADR) package
 - ☐ Civil Case Cover Sheet (served in complex cases only)
 - ☐ cross-complaint
 - ☒ other (specify documents): **Notice to Plaintiff**
- Party served (specify name of party as shown on documents served):
City and County of San Francisco
 - ☒ Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b on whom substituted service was made) (specify name and relationship to the party named in item 3a):
Nydia S. Gonzalez, Receptionist
- Address where the party was served:
Office of the Mayor, City Hall, Rm. 200, 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102
- I served the party (check proper box)
 - ☒ **by personal service.** I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): **March 29, 2010** (2) at (time): **3:56 p.m.**
 - ☐ **by substituted service.** On (date): _____ at (time): _____ I left the documents listed in item 2 with or in the presence of (name and title or relationship to person indicated in item 3):
 - ☐ **(business)** a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
 - ☐ **(home)** a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
 - ☐ **(physical address unknown)** a person at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.
 - ☐ I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc., § 415.20). I mailed the documents on (date): _____ from (city): _____ or ☐ a declaration of mailing is attached.
 - ☐ I attach a **declaration of diligence** stating actions taken first to attempt personal service.

Page 1 of 2

PROOF OF SERVICE OF SUMMONS

PLAINTIFF/PETITIONER: Mike Quan, et al.	CASE NUMBER: CGC-10-498223
DEFENDANT/RESPONDENT: San Francisco Police Department, et al.	

5. c. ☐ **by mail and acknowledgment of receipt of service.** I mailed the documents listed in item 2 to the party, to the address shown in item 4, by first-class mail, postage prepaid,
- (1) on (date): (2) from (city):
- (3) ☐ with two copies of the *Notice and Acknowledgment of Receipt* and a postage-paid return envelope addressed to me. (Attach completed *Notice and Acknowledgment of Receipt*.) (Code Civ. Proc., § 415.30.)
- (4) ☐ to an address outside California with return receipt requested. (Code Civ. Proc., § 415.40.)
- d. ☐ **by other means** (specify means of service and authorizing code section):

☐ Additional page describing service is attached.

6. The "Notice to the Person Served" (on the summons) was completed as follows:

- a. ☒ as an individual defendant.
- b. ☐ as the person sued under the fictitious name of (specify):
- c. ☐ as occupant.
- d. ☐ On behalf of (specify):
- under the following Code of Civil Procedure section:
- | | |
|---|---|
| <input type="checkbox"/> 416.10 (corporation) | <input type="checkbox"/> 415.95 (business organization, form unknown) |
| <input type="checkbox"/> 416.20 (defunct corporation) | <input type="checkbox"/> 416.60 (minor) |
| <input type="checkbox"/> 416.30 (joint stock company/association) | <input type="checkbox"/> 416.70 (ward or conservatee) |
| <input type="checkbox"/> 416.40 (association or partnership) | <input type="checkbox"/> 416.90 (authorized person) |
| <input type="checkbox"/> 416.50 (public entity) | <input type="checkbox"/> 415.46 (occupant) |
| | <input type="checkbox"/> other: |

7. **Person who served papers**

- a. Name: Maria C. Ascarrunz
- b. Address: 700 Montgomery Street, San Francisco, CA 94111
- c. Telephone number: 415.434.0500
- d. The fee for service was: \$ 0.00
- e. I am:

- (1) ☒ not a registered California process server.
- (2) ☐ exempt from registration under Business and Professions Code section 22350(b).
- (3) ☐ a registered California process server:
- (i) ☐ owner ☐ employee ☐ independent contractor.
- (ii) Registration No.:
- (iii) County:

8. ☒ I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

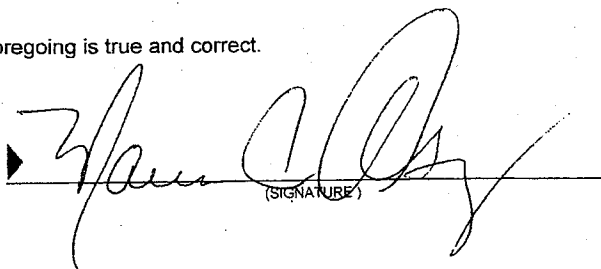
or

9. ☐ I am a California sheriff or marshal and I certify that the foregoing is true and correct.

Date: March 29, 2010

Maria C. Ascarrunz

(NAME OF PERSON WHO SERVED PAPERS/SHERIFF OR MARSHAL)


(SIGNATURE)

SUM-100

SUMMONS (CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

PLEASE SEE ATTACHED FOR DEFENDANTS

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

MIKE QUAN, as an individual, and also as proprietor of PLAYBAR, INC., dba THE ROOM, and JAVIER MAGALLON

NOTICE! You have been sued. The court may decide against you without you being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): San Francisco County Superior Court

400 McAllister Street
San Francisco, CA 94102

CASE NUMBER:
(Número del Caso):

CGC-10-498223

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Mark L. Webb, 700 Montgomery Street, San Francisco, CA 94111; 415.434.0500

CLERK OF THE COURT

DATE:

(Fecha)

MAR 29 2010

Clerk, by

(Secretario)

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

1. ☒ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

4. ☐ by personal delivery on (date):

Page 1 of 1

ATTACHMENT TO SUMMONS

NOTICE TO DEFENDANTS:

SAN FRANCISCO POLICE DEPARTMENT, CITY AND COUNTY OF SAN FRANCISCO, MAYOR GAVIN NEWSOM, OFFICER LARRY BERTRAND, CALIFORNIA DEPARTMENT OF ALCOHOL BEVERAGE CONTROL, STATE OF CALIFORNIA, OFFICER MICHELLE OTT, and DOES 1-100, inclusive

**EXHIBIT C TO
NOTICE OF REMOVAL**

DENNIS J. HERRERA, State Bar #139669
City Attorney
JOANNE HOEPER, State Bar #114961
Chief Trial Deputy
ROBERT A. BONTA, State Bar #202668
Deputy City Attorney
Fox Plaza
1390 Market Street, Sixth Floor
San Francisco, California 94102-5408
Telephone: (415) 554-4268
Facsimile: (415) 554-3837
E-Mail: robert.bonta@sfgov.org

Attorneys for Defendants
SAN FRANCISCO POLICE DEPARTMENT,
CITY AND COUNTY OF SAN FRANCISCO,
MAYOR GAVIN NEWSOM, IN HIS OFFICIAL
CAPACITY, AND OFFICER LARRY BERTRAND

ENDORSED
FILED
Superior Court of California
County of San Francisco

APR 27 2010

CLERK OF THE COURT
BY: CAROLYN BALISTRERI
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

UNLIMITED JURISDICTION

MIKE QUAN, as an individual, and also
as proprietor of PLAYBAR, INC., dba
THE ROOM, and JAVIER MAGALLON,

Plaintiffs,

vs.

SAN FRANCISCO POLICE
DEPARTMENT, CITY AND COUNTY
OF SAN FRANCISCO, MAYOR GAVIN
NEWSOM, OFFICER LARRY
BERTRAND, CALIFORNIA
DEPARTMENT OF ALCOHOL
BEVERAGE CONTROL, STATE OF
CALIFORNIA, OFFICER MICHELLE
OTT, and DOES 1-100, inclusive,

Defendants.

Case No. CGC-10-498223

**DEFENDANTS CITY AND COUNTY
OF SAN FRANCISCO, SAN
FRANCISCO POLICE DEPARTMENT,
MAYOR GAVIN NEWSOM, IN HIS
OFFICIAL CAPACITY, AND
OFFICER LARRY BERTRAND'S
ANSWER TO PLAINTIFFS'
UNVERIFIED COMPLAINT**

Date Action Filed: March 29, 2010
Trial Date: Not Set

Defendants City and County of San Francisco, a municipal corporation, (also erroneously
sued as San Francisco Police Department), Mayor Gavin Newsom, in his official capacity, and

1 Officer Larry Bertrand (collectively "defendants") responds to plaintiffs' unverified complaint as
2 follows:

3 Pursuant to section 431.30 of the California Code of Civil Procedure, defendants deny each
4 and every allegation in the complaint.

5 **SEPARATE AFFIRMATIVE DEFENSES**

6 **FIRST AFFIRMATIVE DEFENSE**

7 (Failure to State a Claim)

8 Plaintiff fails to state facts sufficient to constitute a cause of action against defendants.

9 **SECOND AFFIRMATIVE DEFENSE**

10 (Comparative Negligence)

11 Defendants allege by way of a plea of comparative negligence that plaintiffs are negligent in
12 and about the matters and activities alleged in the complaint; that said negligence contributed to and
13 was a proximate cause of plaintiffs' alleged injuries and damages, if any, or was the sole cause
14 thereof; and that if plaintiffs are entitled to recover damages against defendants, then defendants
15 pray that the recovery be diminished or extinguished by reason of the negligence of plaintiffs in
16 proportion to the degree of fault attributable to plaintiffs.

17 **THIRD AFFIRMATIVE DEFENSE**

18 (Contribution)

19 Defendants allege that the fault of persons other than defendants contributed to and
20 proximately caused the occurrence; and under the principles formulated in the case of *American*
21 *Motorcycle Association v. Superior Court*, 20 Cal. 3d 578 (1978), and under the provisions of
22 California Civil Code §§1431, 1431.1, 1431.2 and 1431.3, defendants pray that the percentage of
23 such contribution be established by special verdict or other procedure, and that defendants' ultimate
24 liability be reduced to the extent of such contribution.

25 **FOURTH AFFIRMATIVE DEFENSE**

26 (Statute of Limitations)

27 Defendants allege that the complaint and each and every cause of action therein is barred by
28 the statute of limitations as set forth in California Government Code §§ 901, 945.4, 945.6, 945.8,

California Code of Civil Procedure § 335 *et seq.*, and related statutes, as well as the four-year statute of limitations for RICO claims (*Agency Holding Corp. v. Malley-Duff & Assocs., Inc.*, 483 U.S. 143 (1987)).

FIFTH AFFIRMATIVE DEFENSE

(Failure to Mitigate Damages)

Defendants allege that the complaint and each and every cause of action therein is barred because plaintiffs failed to use reasonable diligence to mitigate damages allegedly sustained by them, and said failure bars or reduces the recovery, if any, from answering defendants.

SIXTH AFFIRMATIVE DEFENSE

(Defendants' Acts Not A Proximate Cause)

Defendants state that any act or omission on the part of the defendants was not the proximate cause of plaintiffs' injury.

SEVENTH AFFIRMATIVE DEFENSE

(Negligence of Third Parties - Equitable and Statutory Indemnity for Defendants)

Defendants state that plaintiffs' injuries were caused by the negligence or other act or omission of third parties, and defendants are entitled to equitable and statutory indemnity from such third parties.

EIGHTH AFFIRMATIVE DEFENSE

(Denial of Damages)

Defendants deny that plaintiffs have been damaged in any sum or sums, or otherwise, or at all, by reason of any act or omission of defendants.

NINTH AFFIRMATIVE DEFENSE

(Immunity)

Defendants allege the provisions of the California Government Claims Act of the California Government Code (Government Code §810 *et seq.*) as a measure of the duty of the City and County of San Francisco and its employees.

TENTH AFFIRMATIVE DEFENSE

(Immunity - Barred by Tort Claims Act)

The complaint is barred by the provisions and immunities of the California Tort Claims Act, without limitation: Government Code Sections 815; 815.2; 815.3; 815.4; 815.6; 816; 818; 818.2; 818.4; 818.5; 818.6; 818.7; 818.8; 818.9; 820; 820.2; 820.21; 820.25; 820.4; 820.6; 820.8; 820.9; 821; 821.2; 821.4; 821.5; 821.6; 821.8; 822; 822.2; 823; 825; 825.4; 825.6; 827; 830; 830.1; 830.2; 830.4; 830.5; 830.6; 830.8; 830.9; 831; 831.2; 831.21; 831.25; 831.3; 831.4; 831.5; 831.6; 831.7; 831.8; 835; 835.2; 835.4; 840; 840.2; 840.4; 840.6; 844; 844.6; 845; 845.2; 845.4; 845.6; 845.8; 846; 850; 850.2; 850.4; 850.6; 850.8; 854; 854.2; 854.3; 854.4; 854.5; 854.8; 855; 855.2; 855.4; 855.6; 855.8; 856; 856.2; 856.4; 856.6; 860; 860.2; 860.4; 862; 865; 866; 867; 895; 895.2; 895.4; 895.6; 895.8. Under California law, defendants are liable only pursuant to statute.

ELEVENTH AFFIRMATIVE DEFENSE

(Claims Requirements)

Plaintiffs failed to comply with the claims requirements with respect to suits against public entities, pursuant to Government Code Sections 900-915.4, 930-951 inclusive and other applicable statutes.

TWELFTH AFFIRMATIVE DEFENSE

(Variance Between Tort Claim and Complaint)

Plaintiffs' purported causes of action are limited to those factual allegations and theories of recovery set forth in plaintiffs' written government tort claim, if any, and that to the extent that the complaint attempts to enlarge or expand upon those allegations and theories, the complaint fails to state a cause of action and is barred pursuant to Government Code §§ 905, 910, 911.2, 945.5, 950.2, 950.6 and related provisions.

THIRTEENTH AFFIRMATIVE DEFENSE

(Good Faith)

Defendants allege that the employees, officials and agents of defendants were at all times material hereto acting with both subjective and objective good faith, such that any claim for relief that plaintiffs may have is barred by law.

FOURTEENTH AFFIRMATIVE DEFENSE

(Estoppel)

1 By reason of plaintiffs' own acts and omissions, plaintiffs are estopped from seeking any
2 recovery from defendants by reason of the allegations set forth in the complaint.

3 **FIFTEENTH AFFIRMATIVE DEFENSE**

4 (Res Judicata)

5 The complaint and each cause of action therein is barred by the doctrine of collateral
6 estoppel, res judicata, and the case law prohibiting a plaintiff from "splitting" claims or causes of
7 action. *Ferraro v. Southern Cal. Gas Co.*, 102 Cal. App. 3d 33 (1980).

8 **SIXTEENTH AFFIRMATIVE DEFENSE**

9 (No Punitive Damages)

10 The City and County of San Francisco, a public entity, is immune from liability for
11 exemplary damages herein pursuant to the provisions of Section 818 of the California Government
12 Code.

13 **SEVENTEENTH AFFIRMATIVE DEFENSE**

14 (Assumption of Risk)

15 Plaintiffs had full knowledge of the risk involved in the activity in which plaintiffs were
16 engaged at the time of the occurrence of the incident set forth in the complaint; plaintiffs voluntarily
17 assumed all the risks incident to the activity engaged in at the time and place mentioned in the
18 complaint, and the loss or damage, if any, sustained by plaintiffs were caused by said risks.

19 **EIGHTEENTH AFFIRMATIVE DEFENSE**

20 (Careless, Reckless, Wanton and Negligent Acts)

21 At all times mentioned in the complaint, plaintiffs acted in a careless, reckless, wanton and
22 negligent manner in and about the matters set forth in the complaint; such careless, reckless, wanton
23 and negligent conduct proximately contributed to the injuries and damages, if any, sustained or
24 claimed by plaintiffs; that as a consequence, plaintiffs' claims are barred.

25 **NINETEENTH AFFIRMATIVE DEFENSE**

26 (Release)

27 Plaintiffs have released defendants of liability.

28 **TWENTIETH AFFIRMATIVE DEFENSE**

(Several Liability)

In the event that defendants are found to be liable – which liability is specifically denied and stated merely for the purposes of this affirmative defense – such liability, if any, for non-economic damages shall be several, and not joint, pursuant to the California Fair Responsibility Act of 1986 (Proposition 51) as set forth in Sections 1431.2 and 1432 et seq of the California Civil Code. Defendants request that the trier of fact be instructed that the amount of non-economic damages be allocated in direct proportion to the percentage of fault, if any, assessed against each person or entity to which the Act applies and that a separate judgment be rendered against each such person or entity in the amount of such non-economic damages attributable to that person or entity.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Use Of Force Justified)

The complaint and each cause of action therein is barred because the use of force against the plaintiffs by defendants, if any, was privileged and justified.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Unclean Hands)

The complaint and each cause of action therein is barred by the doctrine of unclean hands.

TWENTY-THIRD AFFIRMATIVE DEFENSE

(Legal Justification)

Defendants had legal justification for any actions and omissions and therefore the complaint and each and every cause of action therein is barred.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(Self-Defense / Defense Of Others)

The Complaint and each cause of action is barred because any force used against plaintiffs, if any, was lawful exercise of self-defense or defense of others.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(Consent to Use of Force)

At all times relevant to plaintiffs' complaint herein, plaintiffs knowingly, voluntarily and/or willingly consented to the use of force and/or contact upon his person.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

(Force Not Excessive)

No more force or contact was used on plaintiffs' person than was necessary to effect detention, overcome any resistance thereto, prevent escape therefrom, prevent injury to the officers and/or to facilitate and safeguard a valid police investigation.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

(CA Penal Code Sections Re Arrest & Use of Force)

Defendants allege that at all times mentioned in plaintiff's Complaint herein, Defendants acted in accordance with and pursuant to §§834, 834a 835, 835a, and 836 of the California Penal Code.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

(Mutual Combat)

Defendants allege that plaintiffs had full knowledge of the risks involved in the mutual combat activity in which plaintiffs engaged and set forth in the complaint herein; that plaintiffs voluntarily assumed all the risks incident to the activity engaged in at the time and place mentioned in said complaint, and that the loss or damage, if any, sustained by plaintiffs was caused by said risks, which were accepted and voluntarily assumed by plaintiffs when they engaged in said activity.

TWENTY-NINTH AFFIRMATIVE DEFENSE

(Peace Officer Immunities Apply)

Defendants are immune from any liability and protected against the burden of litigation under the statutory and common law immunities protecting peace officers, prosecutors and public officials. These immunities include, but are not limited to, Penal Code Section 847(b)(1).

THIRTIETH AFFIRMATIVE DEFENSE

(Additional Affirmative Defenses)

Defendants presently have insufficient knowledge or information on which to form a belief as to whether they may have additional, as yet unstated, defenses available. Defendants reserve the right to assert additional defenses in the event that discovery indicates that they would be

1 appropriate.

2 WHEREFORE, defendants prays for judgment as follows:

- 3 1. That plaintiffs take nothing from defendants;
- 4 2. That the complaint be dismissed with prejudice;
- 5 3. That judgment be entered in favor of defendants;
- 6 4. That defendants recover costs of suit herein, including attorneys' fees; and
- 7 5. For such other relief as is just and proper.

8
9 Dated: April 27, 2010

10 DENNIS J. HERRERA
11 City Attorney
12 JOANNE HOEPER
13 Chief Trial Deputy
14 ROBERT A. BONTA
15 Deputy City Attorney

16 By: 
17 ROBERT A. BONTA

18 Attorneys for Defendants
19 SAN FRANCISCO POLICE DEPARTMENT,
20 CITY AND COUNTY OF SAN FRANCISCO,
21 MAYOR GAVIN NEWSOM, IN HIS OFFICIAL
22 CAPACITY, AND OFFICER LARRY BERTRAND
23
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PROOF OF SERVICE

I, ANNA BURCIAGA, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the above-entitled action. I am employed at the City Attorney's Office of San Francisco, Fox Plaza Building, 1390 Market Street, Sixth Floor, San Francisco, CA 94102.

On April 27, 2010, I served the following document(s):

DEFENDANTS CITY AND COUNTY OF SAN FRANCISCO, SAN FRANCISCO POLICE DEPARTMENT, MAYOR GAVIN NEWSOM, IN HIS OFFICIAL CAPACITY, AND OFFICER LARRY BERTRAND'S ANSWER TO PLAINTIFFS' UNVERIFIED COMPLAINT

on the following persons at the locations specified:

Mark L. Webb, Esq.
Law Offices of Mark L. Webb
700 Montgomery Street
San Francisco, CA 94111
Telephone: 415-434-0500
Facsimile: 415-434-0502
Attorney for Plaintiffs

in the manner indicated below:

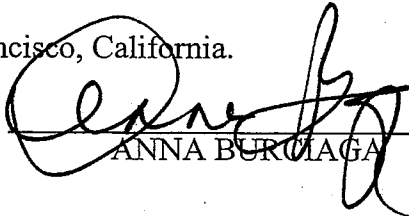
☒ **BY UNITED STATES MAIL:** Following ordinary business practices, I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and mailing with the United States Postal Service. I am readily familiar with the practices of the San Francisco City Attorney's Office for collecting and processing mail. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be deposited, postage prepaid, with the United States Postal Service that same day.

☐ **BY PERSONAL SERVICE:** I sealed true and correct copies of the above documents in addressed envelope(s) and caused such envelope(s) to be delivered by hand at the above locations by a professional messenger service. A declaration from the messenger who made the delivery ☐ is attached or ☐ will be filed separately with the court.

☐ **BY OVERNIGHT DELIVERY:** I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and delivery by overnight courier service. I am readily familiar with the practices of the San Francisco City Attorney's Office for sending overnight deliveries. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be collected by a courier the same day.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed April 27, 2010, at San Francisco, California.


ANNA BURCIAGA

DENNIS J. HERRERA, State Bar #139669
City Attorney
JOANNE HOEPER, State Bar #114961
Chief Trial Deputy
ROBERT A. BONTA, State Bar #202668
Deputy City Attorney
Fox Plaza
1390 Market Street, Sixth Floor
San Francisco, California 94102-5408
Telephone: (415) 554-4268
Facsimile: (415) 554-3837
E-Mail: robert.bonta@sfgov.org

ENDORSED
FILED
Superior Court of California
County of San Francisco

APR 27 2010

CLERK OF THE COURT
BY: GAROLYN BALISTRERI
Deputy Clerk

Attorneys for Defendants
SAN FRANCISCO POLICE DEPARTMENT,
CITY AND COUNTY OF SAN FRANCISCO,
MAYOR GAVIN NEWSOM, IN HIS OFFICIAL
CAPACITY, AND OFFICER LARRY BERTRAND

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

UNLIMITED JURISDICTION

MIKE QUAN, as an individual, and also
as proprietor of PLAYBAR, INC., dba
THE ROOM, and JAVIER MAGALLON,

Plaintiffs,

vs.

SAN FRANCISCO POLICE
DEPARTMENT, CITY AND COUNTY
OF SAN FRANCISCO, MAYOR GAVIN
NEWSOM, OFFICER LARRY
BERTRAND, CALIFORNIA
DEPARTMENT OF ALCOHOL
BEVERAGE CONTROL, STATE OF
CALIFORNIA, OFFICER MICHELLE
OTT, and DOES 1-100, inclusive,

Defendants.

Case No. CGC-10-498223

**DEFENDANTS CITY AND COUNTY
OF SAN FRANCISCO, SAN
FRANCISCO POLICE DEPARTMENT,
MAYOR GAVIN NEWSOM, IN HIS
OFFICIAL CAPACITY, AND
OFFICER LARRY BERTRAND'S
DEMAND FOR TRIAL BY JURY**

Date Action Filed: March 29, 2010
Trial Date: Not Set

1 Defendants City and County of San Francisco, a municipal corporation, (also erroneously
2 sued as San Francisco Police Department), Mayor Gavin Newsom, in his official capacity, and
3 Officer Larry Bertrand (collectively "defendants") hereby demand a trial by jury.
4

5 Dated: April 27, 2010
6

7 DENNIS J. HERRERA
8 City Attorney
9 JOANNE HOEPER
10 Chief Trial Deputy
11 ROBERT A. BONTA
12 Deputy City Attorney

13 By: 

14 ROBERT A. BONTA
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Attorneys for Defendants
SAN FRANCISCO POLICE DEPARTMENT,
CITY AND COUNTY OF SAN FRANCISCO,
MAYOR GAVIN NEWSOM, IN HIS OFFICIAL
CAPACITY, AND OFFICER LARRY BERTRAND

PROOF OF SERVICE

I, ANNA BURCIAGA, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the above-entitled action. I am employed at the City Attorney's Office of San Francisco, Fox Plaza Building, 1390 Market Street, Sixth Floor, San Francisco, CA 94102.

On April 27, 2010, I served the following document(s):

DEFENDANTS CITY AND COUNTY OF SAN FRANCISCO, SAN FRANCISCO POLICE DEPARTMENT, MAYOR GAVIN NEWSOM, IN HIS OFFICIAL CAPACITY, AND OFFICER LARRY BERTRAND'S DEMAND FOR TRIAL BY JURY

on the following persons at the locations specified:

Mark L. Webb, Esq.
Law Offices of Mark L. Webb
700 Montgomery Street
San Francisco, CA 94111
Telephone: 415-434-0500
Facsimile: 415-434-0502
Attorney for Plaintiffs

in the manner indicated below:

☒ **BY UNITED STATES MAIL:** Following ordinary business practices, I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and mailing with the United States Postal Service. I am readily familiar with the practices of the San Francisco City Attorney's Office for collecting and processing mail. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be deposited, postage prepaid, with the United States Postal Service that same day.

☐ **BY PERSONAL SERVICE:** I sealed true and correct copies of the above documents in addressed envelope(s) and caused such envelope(s) to be delivered by hand at the above locations by a professional messenger service. A declaration from the messenger who made the delivery ☐ is attached or ☐ will be filed separately with the court.

☐ **BY FACSIMILE:** Based on a written agreement of the parties to accept service by fax, I transmitted true and correct copies of the above document(s) via a facsimile machine at telephone number Fax #' to the persons and the fax numbers listed above. The fax transmission was reported as complete and without error. The transmission report was properly issued by the transmitting facsimile machine, and a copy of the transmission report ☐ is attached or ☐ will be filed separately with the court.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed April 27, 2010, at San Francisco, California.


ANNA BURCIAGA

PROOF OF SERVICE

I, ANITA MURDOCK, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the above-entitled action. I am employed at the City Attorney's Office of San Francisco, Fox Plaza Building, 1390 Market Street, Sixth Floor, San Francisco, CA 94102.

On April 28, 2010, I served the following document(s):

NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. § 1441(B) (FEDERAL QUESTION) BY DEFENDANTS CITY AND COUNTY OF SAN FRANCISCO, MAYOR GAVIN NEWSOM (IN HIS OFFICIAL CAPACITY) AND OFFICER LARRY BERTRAND OF UNVERIFIED COMPLAINT OF PLAINTIFFS; DEMAND FOR JURY TRIAL

[28 U.S.C. § 1441(A); F.R.C.P. 38(B)]

on the following persons at the locations specified:

Mark L. Webb, Esq.
Law Offices of Mark L. Webb
700 Montgomery Street
San Francisco, CA 94111
Telephone: 415-434-0500
Facsimile: 415-434-0502
Attorney for Plaintiffs

John P. Devine, Esq.
Deputy Attorney General
State of California
455 Golden Gate Avenue
San Francisco, CA 94102
Telephone: 415-703-5522
Attorney for State of California, et al.

in the manner indicated below:

☒ **BY UNITED STATES MAIL:** Following ordinary business practices, I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and mailing with the United States Postal Service. I am readily familiar with the practices of the San Francisco City Attorney's Office for collecting and processing mail. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be deposited, postage prepaid, with the United States Postal Service that same day.

☐ **BY PERSONAL SERVICE:** I sealed true and correct copies of the above documents in addressed envelope(s) and caused such envelope(s) to be delivered by hand at the above locations by a professional messenger service. A declaration from the messenger who made the delivery ☐ is attached or ☐ will be filed separately with the court.

☐ **BY FACSIMILE:** Based on a written agreement of the parties to accept service by fax, I transmitted true and correct copies of the above document(s) via a facsimile machine at telephone number Fax # to the persons and the fax numbers listed above. The fax transmission was reported as complete and without error. The transmission report was properly issued by the transmitting facsimile machine, and a copy of the transmission report ☐ is attached or ☐ will be filed separately with the court.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed April 28, 2010, at San Francisco, California.


ANITA MURDOCK